

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS BELL TELEPHONE COMPANY
(SBC ILLINOIS) and
COMM SOUTH COMPANIES, INC.

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DOCKET No. 03-0289

Joint Petition for Approval of First Amendment to
Interconnection Agreement dated April 22, 2003,
pursuant to 47 U.S.C. § 252.

MOTION TO DENY APPROVAL OR FOR CLARIFICATION

Now comes the Staff of the Illinois Commerce Commission by their attorney, James E. Weging, and moves, pursuant to 83 Ill. Adm. Code 763.105, that the negotiated agreement in Docket No. 03-0289 be rejected as contrary to the public interest, as announced in the Commission Order of May 13, 2003, in Ill.C.C. Docket No. 01-0662, or that a clarification be given as to when the Order of May 13, 2003, is to be applied to on-going negotiated agreement cases. In support of this Motion, the following is stated.

1. In the above cited cases, the first amendment to the negotiated agreement between Illinois Bell Telephone Co. (SBC Illinois) and Comm South Companies, Inc.¹ *inter alia*, extends the termination of their underlying agreement to September 9, 2004, and on some conditions to September 9, 2005. Section 5.2, p. 22 of GENERAL TERMS AND CONDITIONS-**SBC-13STATE** (Item #2 of 17, attached to the Joint Petition). Section 15.1, p. 42 of GENERAL TERMS AND CONDITIONS-**SBC-13STATE** (Item #2 of 17, attached to the Joint Petition) indicates that the Performance Measures under this Agreement is governed by attachments to the negotiated agreement. The first amendment does not amend Section 15.1 of the existing negotiated agreement.

¹ The parties will be hereinafter designated "SBC" and "Comm South"

2. The existing negotiated agreement between SBC and Comm South was approved by the Commission on September 25, 2002, in Ill.C.C. Docket No. 02-0468. Attached to that agreement (#22 of 67 attachments) is the Appendix Performance Measurements with the running heading of “APPENDIX PERFORMANCE MEASUREMENTS - **SBC-11STATE**” which is usually referred to as the 11State Remedy Plan. The expiration date of the original agreement is September 2, 2003, (Sections 5.2 of the GENERAL TERMS AND CONDITIONS-**SBC-13STATE**, p. 36; #2 of 67 attachments).

3. The effect of the First Amendment is to extend the application of the 11State Remedy Plan for one or two years under this negotiated agreement.

4. The Commission order of May 13, 2003, in Ill.C.C. Docket No. 01-0662 provides, *inter alia*, on pages 896-7:

“3520. As we see it, SBC Illinois has indicated its willingness to send another accessible letter advising CLECs of the adoption of the Section 271 Plan, and the Commission finds this to meet with our purposes. The Commission also directs SBC Illinois to modify the terms of its existing tariff in accordance with this Order. In addition, to ensure that the plan here found to be suitable in preventing backsliding is widely implemented, SBCI need commit to offering CLECs the opportunity to opt-in to the plan approved in this proceeding, that also being the performance remedy plan offered under SBCI’s Alternative Regulation Plan. We agree with Staff that this might help to ensure, over time, that with the greatest possible number of CLECs taking the plan approved in this proceeding, the remedy amounts SBCI will pay thereunder most closely resemble the dollar amounts provided in this proceeding. As to those CLECs preferring to continue with their current remedy plans (if deemed lawful in relation to the respective changes-of-law provisions), such as the 13-state, 11-state, Covad, or merger plan, they should be allowed to continue with that existing remedy plan until such time as they either renegotiate a new remedy plan, or the term of their current interconnection agreement expires....”

(emphasis supplied)

5. The intent of the emphasized language is an indication that, at some time, the Commission expects that all Illinois CLECs will be under, minimally, either of the two remedy plans being authorized by the May 13th Order, the “Commission Approved

Section 271 Plan” or the SBC-proposed plan, designated usually “the Compromise Plan” or the “TDS remedy plan”² (Par. 3558, p.906, Order of May 13, 2003).

6. Although the May 13th Order in Ill.C.C. Docket No. 01-0662 is establishing two “remedy plans,” it must be borne in mind that Ill.C.C. Docket No. 01-0662 is not primarily a remedy plan docket. The docket was to determine what requirements SBC needed to meet in order to be allowed in the interstate telecommunications market. 47 USC 271. The May 13th Order has made these two remedy plans the minimal requirements for SBC to enter and stay in the long-distance market.

7. Thus, the continuation of remedy plans, such as the 13State or 11State, which meet neither the minimum standards nor the minimum remedies of the two remedy plans of Ill.C.C. Docket No. 01-0662 will only serve to undermine the requirements that the Commission has established to allow SBC in the interstate market. Conceivably, if substandard remedy plans are allowed to remain in Illinois, there could be no CLECs under either of the two remedy plans of Ill.C.C. Docket No. 01-0662, thus negating the requirements of the Commission’s May 13th Order.

8. It will be noted that the present cause was filed before the issuance of the May 13th Order. However, SBC has sought to apply the May 13th Order in two dockets (Ill.C.C. Docket Nos. 03-0251 & 03-0262) which also were filed before the issuance of the above order. Further, there are a number of cases (at least Ill.C.C. Docket Nos. 03-0342, 03-0344 and 03-0345) that were filed after the issuance of the May 13th Order in which the application of the May 13th Order has or will be raised.

9. Although Staff has raised this same issue in four other pending dockets, this is the only case wherein the termination date of the existing agreement (Ill.C.C. Docket No. 02-0468) has not been reached or passed during the pendency of the amendment to the agreement which is extending the termination date. Thus, this cause more

² Approved in Ill.C.C. Docket No. 03-0098 as a contingent remedy plan (Order of May 7, 2003), with one change not here pertinent. SBC has claimed that the contingency has arisen (Comments of SBC, Ill.C.C. Docket No 03-0262, filed June 6, 2003).

fundamentally conflicts with the Commission's May 13th Order in Ill.C.C. Docket No. 01-0662, since Comm South could retain the 11State Plan until September 2nd of this year.

10. It should also be noted that this case has to do with the negotiated agreements as filed and written. With both the Docket No. 01-0120 remedy plan and the 271 Remedy Plan, there was a specially designated "opt-in" system, wherein CLECs could get those remedy plans upon notice. While the efficacy of the "opt-in" system is not doubted, oftentimes (with the Docket No. 01-0120 remedy plan in any case) the negotiated agreement between SBC and the "opting-in" CLEC never reflected the existence of that remedy plan. Thus, there has been a mismatch between what remedy plan was controlling the service between SBC and a CLEC and what the public saw in the negotiated agreement between SBC and that same CLEC (either no remedy plan within the negotiated agreement or a different one which was not being followed). If the 11State Remedy Plan is or will be replaced by one of the two approved remedy plans, the negotiated agreement between SBC and Comm South should show which remedy plan is within their negotiated agreement, clearly and cleanly.

11. In the alternative, if the Commission decides either to approve this first amendment of SBC-Comm South negotiated agreement or to allow this first amendment of SBC-Comm South negotiated agreement to go into effect without approval, Staff seeks clarification of when the Commission wants the May 13th Order's requirements to be applied to nonconforming negotiated agreements, when said agreements are filed for approval.

Wherefore the Staff of the Illinois Commerce Commission ask that First Amendment to the Negotiated Agreement between SBC and Comm South be rejected as contrary to the public interest as expressed in the May 13th Order of the Commission in Ill.C.C. Docket No. 01-0662. In the alternative, Staff asks that the time for applying the May 13th Order to pending negotiated agreement case be clarified.

Respectfully submitted,

James E. Weging

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NOTICE OF FILING

TO: Parties on Service List

PLEASE TAKE NOTICE that I have, on this 18th day of June, 2003 A.D., filed with the Chief Clerk of the Illinois Commerce Commission, the Motion of the Staff of the Illinois Commerce Commission to Deny Approval or For Clarification, a copy of which is hereby served upon you.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that copies of the above Notice, together with a copy of the document referred to therein, have been served upon the parties to whom the Notice is directed by e-mail or, if without an e-mail address, by first class mail, proper postage prepaid, from Chicago, Illinois on the 18th day of June, 2003 A.D.

JAMES E. WEGING

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Docket No. 03-0289
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